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State v. Standley Respondent's Brief Dckt. 43020

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43020 & 43021
Plaintiff-Respondent,)	
)	Kootenai County Case No.
v.)	CR-2011-19294 &
)	CR-2011-19389
KEITH ANTON SARBACHER,)	
)	
Defendant-Appellant.)	RESPONDENT'S BRIEF
)	

Issue

Has Sarbacher failed to establish that the district court abused its discretion by revoking his probation and executing his concurrent underlying unified sentences of 10 years, with four years fixed, imposed upon his guilty pleas to grand theft?

Sarbacher Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Sarbacher pled guilty to one count of grand theft in each of the above-captioned cases and was accepted into Drug Court. (43020 R., pp.48-49; 43021 R., pp.105-06.) Just over a month later, his probation officer filed a Report of Violation alleging

Sarbacher had violated the terms of his release to Drug Court by failing to report for a scheduled Drug Court hearing, failing to report for urinalysis testing on six occasions, and absconding from supervision. (43020 R., pp.52-57.) Sarbacher admitted to the allegations as alleged, and the district court discharged him from Drug Court, imposed concurrent unified sentences of 10 years, with four years fixed, and retained jurisdiction. (43020 R., pp.61-62, 67-69; 43021 R., pp.113-14, 118-20.) After a period of retained jurisdiction, the district court suspended Sarbacher's sentences and placed him on probation for two years. (43020 R., pp.73-77; 43021 R., pp.124-28.)

Approximately five months later, Sarbacher's probation officer arrested him on an Agent's Warrant and subsequently filed a Report of Probation Violation alleging Sarbacher had violated his probation by failing to pay his cost of supervision fees, failing to attend and/or successfully complete substance abuse treatment, incurring two new felony charges, using methamphetamine, and disobeying his probation officer's instructions not to associate with his brother. (43020 R., pp.80, 97-107; 43021 R., pp.129, 148-58.) While the probation violation proceedings were still pending, Sarbacher's probation officer again arrested him on an Agent's Warrant and filed an addendum to the Report of Violation alleging Sarbacher had violated his probation by testing positive for alcohol and methamphetamine, failing to report to his probation officer as directed, and changing residences without permission. (43020 R., pp.123-24, 126-38; 43021 R., pp.174-75, 177-89.) Sarbacher admitted to some of the allegations and the district court revoked his probation and ordered his underlying sentences executed; however, it retained jurisdiction for a second time. (43020 R., pp.158-60; 43021 R., pp.209-11.) After the second period of retained jurisdiction, the district court

suspended Sarbacher's sentences and placed him on probation for two years. (43020 R., pp.165-67; 43021 R., pp. 216-18.)

Just 38 days later, Sarbacher's probation officer filed a new Report of Violation alleging Sarbacher had violated his probation by associating with a known felon, testing positive for methamphetamine, failing to attend treatment programming as directed, failing to maintain full-time employment, changing residences without permission, and failing to make himself available for supervision. (43020 R., pp.168-71; 43021 R., pp.219-22.) While these allegations were pending, Sarbacher's probation officer filed a second Report of Violation alleging Sarbacher had failed to appear for court on September 2, 2014; had eluded police on December 10, 2014, and attempted to elude police again on December 12, 2014. (43020 R., pp.202-27; 43021 R., pp.253-78.) After a hearing at which the district court found Sarbacher in violation of his probation, the district court revoked Sarbacher's probation and ordered his underlying sentences executed without reduction. (43020 R., pp.245-47; 43021 R., pp.301-03.) Sarbacher appealed timely from the district court's order revoking his probation in both cases. (43020 R., pp.248-51; 43021 R., pp.304-07.)

Sarbacher asserts the district court abused its discretion when it revoked his probation in light of his acceptance of responsibility and desire for additional substance abuse treatment in the community. (Appellant's brief, pp.2-4.) The record supports the district court's decision to revoke Sarbacher's probation.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to revoke probation lies within the sound discretion of the district court. State v. Roy, 113 Idaho 388, 392, 744 P.2d, 116, 120 (Ct. App. 1987); State v.

Drennen, 122 Idaho 1019, 842 P.2d 698 (Ct. App. 1992). When deciding whether to revoke probation, the district court must consider “whether the probation [was] achieving the goal of rehabilitation and [was] consistent with the protection of society.” Drennen, 122 Idaho at 1022, 842 P.2d at 701.

Sarbacher is not an appropriate candidate for probation. At the probation violation disposition hearing, the state addressed Sarbacher’s ongoing criminal offending, his history of poor performance in the community, the danger he presents to the public, and his failure to rehabilitate or be deterred despite prior legal sanctions and treatment opportunities. (Tr., p.48, L.18 – p.50, L.20.) The district court subsequently articulated the correct legal standards applicable to its decision and set forth in detail its reasons for revoking Sarbacher’s probation and executing his underlying sentences. (Tr., p.51, L.23 – p.54, L.2.) The state submits that Sarbacher has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the probation violation disposition hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm the district court’s order revoking Sarbacher’s probation in both cases.

DATED this 23rd day of December, 2015.

/s/
LORI A. FLEMING
Deputy Attorney General

CATHERINE MINYARD
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of December, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JUSTIN M. CURTIS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 MS. MARSHALL: I have this letter, your Honor,
2 from the program that we were just discussing. I don't
3 dare to pronounce it.
4 THE COURT: Any objection from the state to
5 the Court receiving that document?
6 MS. McGOVERN: No, your Honor. Thank you.
7 THE COURT: I'll take a moment and review
8 that. It's a one-page document from Seadrunar.
9 All right. I've read that document. It's a
10 one-page letter from Aly Blackwell on Seadrunar
11 letterhead and make it part of the record.
12 Any other documentary evidence?
13 MS. MARSHALL: No, your Honor.
14 THE COURT: The Court has received -- and I
15 don't know if counsel has received them or not, normally
16 we cause this to happen, but I don't see that.
17 I have a one-page letter from Shannon Sneve.
18 I have a one-page letter from Rick Bashaw.
19 Have either counsel seen these letters?
20 MS. McGOVERN: I have not.
21 MS. MARSHALL: I have not.
22 THE COURT: We will make sure that you see
23 them and if wanted, after the hearing, we can make
24 copies of those letters for you.
25 MS. MARSHALL: I believe those were handed up

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1 percent sure of it, but I request that, you know, I be
2 given a chance to go do this rehab because I think they
3 have something to offer that I haven't done before.
4 I've done treatment before. I did TC.
5 Regardless what anybody thinks, nobody can take that
6 from me. You know and this place has that. It has TC
7 based. I'm familiar. It's not just brushing up on
8 tools. It's a Washington -- it's in Washington, it's
9 out of state, I would have to pay the entry fee myself
10 and not costing the taxpayers any money.
11 Going over there, other than my probation,
12 which I will get caught up on all my probation stuff if
13 given this opportunity to go over there and do this
14 year-and-a-half long program. I've done everything the
15 system has to offer. I've exhausted -- I'm pretty sure
16 your hands are tied pretty much at this point as far as
17 whether you give me probation or send me to prison, you
18 know.
19 I've done TC. I've done CSC. I've done MRT.
20 I already finished a five-year sentence and got out of
21 prison. I got out, was out four months and got more
22 charges in Coeur d'Alene. You gave me drug court, I
23 flopped it in 28 days, you know, I just -- it seems like
24 I get out there, I'm so wanting to get out and do
25 probation and go out and do the right thing, but as soon

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1 last time. I just wasn't present.
2 THE COURT: I think so.
3 MS. MARSHALL: I think they were.
4 THE COURT: Any objection to the Court
5 considering those letters as part of the disposition
6 phase?
7 MS. McGOVERN: No, your Honor.
8 MS. MARSHALL: No objection.
9 THE COURT: All right. The Court has read
10 them already and so I will make them part of the record
11 here -- part of the packet and will consider them in the
12 disposition phase.
13 Any other evidence from the defense?
14 MS. MARSHALL: No, your Honor.
15 THE COURT: Well, Mr. Sarbacher, beyond your
16 testimony, is there anything more that you'd like to say
17 about this probation violation situation or what the
18 Court ought to do today? You don't have to make a
19 further statement, but if you'd like to make one I'd be
20 happy to listen to it.
21 THE DEFENDANT: Yes, sir. I guess what I'm
22 asking today is I know that I violated my probation. I
23 know that. I accept responsibility for my faults in
24 this and poor decision-making. I know that I'm probably
25 going to prison today. In fact, I'm almost a hundred

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1 as I get out there, I start getting hit with life's
2 faults, you know what I mean, if stuff starts not going
3 my way I throw a fit and Kelth's back in jail again,
4 back in front of Mr. Haynes, you know, doing this same
5 old song and dance. And it's not to be taken lightly.
6 I know whatever you give me today, I got it
7 coming. You know, I am at the mercy of the Court. Give
8 me this opportunity to go over there and do this
9 year-long treatment where I can be better to go home
10 with my family. And I ain't going to sit here and tell
11 you that I ain't disappointed because of my own -- I'm
12 going to face the fact. I'm going to tell you I will
13 give it my best shot, and if I got a chance to change
14 it, this is it. That's all I got.
15 Thank you for your time.
16 THE COURT: Thank you.
17 State's recommendation, please.
18 MS. McGOVERN: Your Honor, the state is
19 recommending imposition in this matter.
20 The underlying charges in this case were a
21 grand theft, I believe, two counts of grand theft. At
22 sentencing the Court ordered four plus six and ordered
23 that run concurrent between those two charges.
24 Your Honor, looking back to the PSI that was
25 generated at the time of sentencing in this case.

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<p>1 Mr. Sarbacher's criminal history consists -- and I'm not 2 going to go through everything, but the relevant matters 3 are disorderly conduct, 2005. 4 Flee or attempt to elude police officers, a 5 felony, in 2005. 6 A burglary in 2005. 7 An aggravated battery that was amended to a 8 misdemeanor battery in 2007. 9 A probation violation in 2007. 10 And then a parole violation, which is dated 11 2010. 12 Your Honor, now before the Court is what 13 clearly is felony-level attempted eluding. 14 Mr. Sarbacher continues to act in a way that is 15 dangerous to public. He's someone who has exhibited 16 behavior from theft, to the eluding to battery. This is 17 the kind of dangerous behavior that the people of the 18 State of Idaho expect there to be a significant response 19 to. 20 It's the state's position that the only 21 effective way to serve that interest and to protect the 22 public is through imposition of Mr. Sarbacher's sentence 23 at this time. In the context of his underlying cases, 24 he was given the opportunity for the drug court program 25 in 2012. He failed that.</p> <p style="text-align: center;">49</p>	<p>1 He was then given the opportunity for the -- I 2 guess completed a TC rider, a retained jurisdiction, 3 which he referenced in the Court here today in his own 4 comments. That was from, looks like, September 2012 to 5 May of 2013. 6 Then he was given another opportunity at the 7 retained jurisdiction in May 2014. He was released in 8 August of 2014. And now he's back before the Court with 9 the instant violation. 10 Your Honor, at this point, we're beyond 11 rehabilitation. We've attempted that in the context of 12 the community with the drug court program, which I 13 believe is the best program we have. 14 We've done two riders; that's the next best 15 step to get somebody out of the community and give them 16 the appropriate treatment. 17 We're beyond rehabilitation. At this point 18 we're simply at deterrence and protection of the 19 community. And so I would request at this point that 20 the Court impose sentence. 21 Thank you. 22 THE COURT: Defense's recommendation, please. 23 MS. MARSHALL: Your Honor, Mr. Sarbacher has 24 already spoke with regards to his hope for what the 25 Court would allow him an opportunity at. The only thing</p> <p style="text-align: center;">50</p>
<p>1 that I wanted to follow up on is just to say that 2 recognizing Mr. Sarbacher does have children here. You 3 know, he does have a family to support. 4 I know for some people that we see come before 5 the Court, sometimes retained jurisdictions aren't the 6 best for that individual. Sometimes community-based 7 inpatient programs like a, you know, the Good Samaritan 8 that we have here locally or some other program, suits 9 them better. 10 Perhaps this program that Mr. Sarbacher -- it 11 looks like in the letter, at least, in his description 12 of what that particular program entails, it does seem 13 like a pretty reputable program. It does appear to be 14 something that he could probably benefit from. 15 I know that obviously the Court's -- the 16 Court's hands are relatively tied with regards to this 17 case. I know that. Mr. Sarbacher is just hoping for 18 the Court's mercy with regards to giving him one last 19 opportunity for him to demonstrate that he could 20 successfully complete a program including that program 21 and be placed back out on probation after he 22 successfully completes that. 23 THE COURT: Thank you. 24 Well, having found that the state proved the 25 allegation of probation violation from the report dated</p> <p style="text-align: center;">51</p>	<p>1 December 17, 2014, specifically that Mr. Sarbacher 2 engaged in conduct that violates the law in an amount 3 that really does amount to a felony eluding under a 4 preponderance of the evidence standard, the Court makes 5 the finding that you are in violation of your probation. 6 I continue to have the four factors of 7 sentencing in my mind that we've talked about before. 8 Those factors include how to best protect society with a 9 sentence. How to deter you and deter other people in 10 similar situations from such criminal conduct. How to 11 address the punishment that society expects under all of 12 these circumstances and how to help any rehabilitation 13 that can be aided by the Court. I have those factors in 14 mind. 15 I think the state adequately outlined the 16 prior criminal history. It's a significant one. And 17 Mr. Sarbacher spoke to that, as well, really quite 18 clearly and quite forthrightly about his criminal 19 history. 20 The two cases that are before the Court are 21 grand theft cases in 2011. They involved -- they 22 occurred in October of 2011 where a truck was found on 23 the side of the road, had a motorcycle in the back of 24 it. It was reported -- the motorcycle was reported 25 stolen out of Lewiston. Mr. Sarbacher had admitted that</p> <p style="text-align: center;">52</p>

<p>1 he had taken the motorcycle at somebody else's request. 2 Also the truck had been broken into. 3 Mr. Sarbacher was ultimately found to be 4 guilty of grand theft in two counts. 5 The Court utilized a retained jurisdiction 6 program in July of 2012 and placed Mr. Sarbacher on 7 probation for two years in May of 2013. 8 There were violations about six months later; 9 one in November of 2013, one in April of 2014. We tried 10 another rider program again in April of 2014. And 11 Mr. Sarbacher was placed back out on two new years of 12 supervised probation August of 2014. 13 We now have this eluding incident. This is a 14 situation -- and Mr. Sarbacher, he describes it 15 accurately, the Court's hands are tied here. 16 This is a situation under all of these 17 circumstances now, given the prior criminal history, the 18 prior efforts that we've made, that community 19 supervision is no longer one that the Court can really 20 feel is in the best interest of society. 21 We've come to a point where we simply have to 22 protect society and that is by the imposition of the 23 suspended sentences. 24 In each case those sentences are 10-year 25 sentences; four fixed followed by six indeterminate.</p> <p>53</p>	<p>1 They run concurrent to each other. I revoke probation 2 and I impose those sentences. 3 Any questions from the state? 4 MS. McGOVERN: No, your Honor. 5 THE COURT: Any questions from the defense? 6 MS. MARSHALL: No, your Honor. Thank you. 7 THE COURT: Then you are remanded to the 8 bailiff to begin the service of these sentences. My 9 best of luck to you on the parole application and for 10 the rest of your life once you're out on parole. 11 You're excused. 12 (Matter adjourned.)</p> <p>54</p>